



DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 791

RIN 1235-AA37

Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule: Delay of Effective Date

AGENCY: Wage and Hour Division (WHD), Department of Labor (DOL).

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays until October 5, 2021, the effective date of the rule titled “Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule,” published in the Federal Register on July 30, 2021, to conform to the effective date requirements of the Congressional Review Act.

DATES: The effective date of the rule published at 86 FR 40939 on July 30, 2021, is delayed to October 5, 2021.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, large print, braille, audiotape, compact disc, or other accessible format), upon request, by calling (202) 693-0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1-877-889-5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency’s regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD’s toll-free help line at (866) 4US-WAGE ((866) 487-9243) between 8 a.m. and 5 p.m. in your local time

zone, or logging onto WHD's website for a nationwide listing of WHD district and area offices at <http://www.dol.gov/whd/america2.htm>.

SUPPLEMENTARY INFORMATION: On July 30, 2021, the Department published a final rule titled "Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule" (Joint Employer Rescission Final Rule) to rescind the final rule titled "Joint Employer Status Under the Fair Labor Standards Act," which had been published on January 16, 2020. 86 FR 40939 (July 30, 2021). The effective date set forth in the Joint Employer Rescission Final Rule is September 28, 2021, 60 days after publication.

Pursuant to the Congressional Review Act (CRA), the Department submitted the required report and information on the Joint Employer Rescission Final Rule to each House of the Congress and the Comptroller General. 5 U.S.C. 801(a)(1)(A)-(B). The Department has been informed that the Senate did not receive the submission until August 6, 2021. The Office of Information and Regulatory Affairs (OIRA) designated the Joint Employer Rescission Final Rule as a major rule, as defined by 5 U.S.C. 804(2). Accordingly, in order to conform to the effective date requirements of the CRA, the Department in this final rule is extending the effective date of the Joint Employer Rescission Final Rule to October 5, 2021, 60 days after the Senate received the Department's submission. 5 U.S.C. 801(a)(3).

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) provides that an agency is not required to publish a notice of proposed rulemaking in the Federal Register and solicit public comments when the agency has good cause to find that doing so would be "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). The Department finds that good cause exists to dispense with the notice and public comment procedures for this final rule, as it concludes that such procedures are unnecessary because this rule merely extends the effective date of the Joint Employer Rescission Final Rule by 7 days in order to comply with the effective date requirements of the CRA for major rules. Moreover, the Joint Employer Rescission Final Rule was promulgated pursuant to notice and comment rulemaking, and this

rule does not make any changes to that rule other than the brief delay of the effective date. 86 FR 40939 (July 30, 2021). Therefore, the Department is issuing this delay of effective date as a final rule.

Section 553(d) of the APA also provides that substantive rules should take effect not less than 30 days after the date they are published in the Federal Register unless “otherwise provided by the agency for good cause found[.]” 5 U.S.C. 553(d)(3). Since this rule merely delays the effective date of the Joint Employer Rescission Final Rule by 7 days as required by the CRA, and makes no other changes to that rule, the Department finds that it is unnecessary to delay the effective date of this action by 30 days. Accordingly, the Department finds that good cause exists to make this delay of effective date action effective on the date of publication.

Section 808 of the CRA provides that a rule shall take effect at the time determined by the promulgating agency when the agency for good cause finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 808(2). The Department finds that good cause exists to dispense with notice and public procedure for this final rule, as it concludes that such procedures are unnecessary. As noted above, the Joint Employer Rescission Final Rule was published on July 30, 2021, with an effective date of September 28, 2021, and this rule merely delays the effective date of that rule by 7 days to comply with the requirements of the CRA. Therefore, the Department finds that good cause exists to make this delay of effective date effective on the date of publication. However, consistent with the CRA, the Department will submit to Congress and the Comptroller General the reports required by the Act. 5 U.S.C. 801(a)(1)(A)-(B).

Signed on September 10, 2021.

Jessica Looman,

Acting Administrator, Wage and Hour Division.

